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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,493	02/15/2001	Ron Grosz	00216-544001/T-695	1706

26161 7590 03/27/2003

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EXAMINER

SHIPSIDES, GEOFFREY P

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/784,493

Applicant(s)

GROSZ ET AL.

Examiner

Geoffrey P. Shippides

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 7-12. 6) ☒ Other: IDS #14.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. With regard to claim 21, claim 21 is dependent upon claim 20, which is dependent upon claim 2, which is dependent upon claim 1. Claim 21 recites that there is a second open end opposite the first open end, that is mounted on to a mold member prior to step (a). Claim 1, however, teaches an application end and an opposite end, but it is not clear from the instant claim language that the application end is the second open end and that the opposite end is the first open end. Claim 21 further recites the limitation "the first open end" in line 2. There is insufficient antecedent basis for this limitation in the claim. Appropriate corrective action is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 2, 4, 7, 8, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,393,643 (Fryar et al.).

With regard to claim 1, Fryar et al. teaches a method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column 4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further inherent in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46), then the insert is removed (Column 2, line 29), then the interphase fills the space previously occupied by the pin (Column 7, lines 32-36). Fryar et al. does not specifically teach that the inner phase added is a fluid, but does teach that it does solidify, and thus it is the examiner's position that it is inherently a fluid as the time that it is dispensed into the space previously occupied by the pin.

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16).

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With regard to claim 2, it is inherent in the process of Fryar et al. that a portion of the mold cavity (the closed part) defines an application surface of the product.

With regard to claim 4, the insert of Fryar et al. is inserted into the mold (or package) prior to the step of delivering molten outer phase material into the mold (or package) (See Figure 3).

With regard to claim 7, the insert of Fryar et al. includes projections, which constitute a taper (Figures 1-5).

With regard to claim 8, Fryar et al. teaches that the insert is pressed tightly (Column 4, line 34) against the opposite end (the opposite end as taught by Fryar et al. constitutes the application end of the instant application). It is the examiner's position that this is a teaching of downward pressure. Further, it is the examiner's position that downward pressure on the insert would be inherent for the insert at all times due to gravity and air pressure.

With regard to claim 12, Fryar et al. teaches that the second composition solidifies (Column 7, lines 34-36) after being dispensed into the space previously occupied by the pin.

6. Claims 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,202,879 (Shelton).

With regard to claim 28, Shelton teaches an antiperspirant stick (title) with a dome shape that has first and second portions (Figs. 1 and 2). Shelton teaches the insertion of an insert (core) into a mold and the addition of molten gel phase into the annular space around the insert and allows the gel phase to cool (Column 15, lines 45-

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5). It is the examiner's position that the gel phase inherently solidifies during the cooling step as Shelton then teaches the removal of the stick from the mold.

With regard to claim 29, the core (insert) of Shelton is a second composition that forms part of the antiperspirant product (Column 15, lines 36-45).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3, 5, 14-16, 20, 21, 24, 25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,393,643 (Fryar et al.) in view of U.S. Patent No. 5,984,553 (Piscopo et al.).

Fryar et al. teaches the basic claimed method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column 4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

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Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46), then the insert is removed (Column 2, line 29), then the interphase fills the space previously occupied by the pin (Column 7, lines 32-36). Fryar et al. does not specifically teach that the inner phase added is a fluid, but does teach that it does solidify, and thus it is the examiner's position that it is intrinsically a fluid as the time that it is dispensed into the space previously occupied by the pin.

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16). It is intrinsic in the process of Fryar et al. that a portion of the mold cavity (the closed part) defines an application surface of the product.

With regard to claim 3, Fryar et al. does not specifically teach that the application surface is dome shaped, as Fryar et al. does not go into any detail concerning the shape of antiperspirant product. Piscopo et al. teaches a dispenser-applicator (title) that is useful for deodorants and antiperspirants (Column 1, line 16), where the cosmetic material is molded in the product dispenser-applicator (Figure 3) and forms a dome shaped application surface. It would have been obvious to one having ordinary skill in the art at the time of invention to mold a product as taught by Fryar et al. in the dispenser-applicator as taught by Piscopo et al. in order to provide a means to dispense the product and it would have been obvious to form an application surface with a domed

shape as taught by Piscopo et al. in order to make a product that conforms to the shape of an arm pit (where deodorant/antiperspirant is usually applied).

With regard to claim 5, Piscopo et al. teaches a first closure (ref. No. 28) which forms the application end of the mold (packaging) of Piscopo et al. (Figures 3 and 4). This first closure as taught by Piscopo et al. is disposable by the user of the dispenser-applicator (Column 2, line 56-57), and thus constitutes a factory seal portion of the container. It would have been obvious to one having ordinary skill in the art at the time of invention to use the dispenser-applicator as taught by Piscopo et al. in the production of the multi-phased product of Fryar et al. in order to provide a means to dispense the product and it would have been obvious to use such a factory seal in order to reassure the consumer that the product is unused.

With regard to claims 20 and 21, the first closure as taught by Piscopo et al. receives the container (package) in sealing engagement (Column 2, lines 53-54). It would have been obvious to one having ordinary skill in the art at the time of invention to use the first closure as taught by Piscopo et al. in order to ensure that the material for the product does not leak out of the container during the molding of the product within the container. This first closure as taught by Piscopo et al. constitutes a mold member and it is sealed with the second open end of the dispenser-applicator prior to the introduction of material into the package (container). It would have been further obvious to one having ordinary skill in the art at the time of invention to seal the first closure to the second open end of the container as taught by Piscopo et al. prior to the molding of any

of the materials as taught by Fryar et al. in order to ensure that none of the materials leak out of the container (package) during the molding of the product.

With regard to claim 24, Piscopo et al. teaches the removal of the first closure (by the consumer) after the product the complete solidification of the material within the package, thus this constitutes the removal of the container from the first closure (mold member). It would have been obvious to one having ordinary skill in the art at the time of invention to allow for the product to completely solidify (all materials) prior to selling the product containing container where a consumer would remove the first closure (mold member) from the container in order to make sure that customers do not get a defective product.

With regard to claim 25, it is well known to provide consumer packages with factory seals in order to reassure the consumer that the product has not been tampered with after leaving the factory. Although Piscopo et al. teaches the use of the first closure as the factory seal, less expensive plastic films are also known to be used as factory seals. It would have been obvious to one having ordinary skill in the art at the time of invention to remove and reuse the first closure of Piscopo et al. after the solidification of the compositions and to add another and less expensive factory seal in order to reduce the cost of the overall process by removing the need to make multiple (and more expensive) first seals that are required to have the strength necessary to withstand the pressures of the molding operations.

With regard to claim 14, Piscopo et al. also teaches an advancement device (Figure 1, ref. No. 27). It would have been obvious to one having ordinary skill in the art

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at the time of invention to use the dispenser-applicator as taught by Piscopo et al. in the production of the multi-phased product of Fryar et al. in order to provide a means to dispense the product and it would have been obvious to a product advancement means as taught by Piscopo et al. in order to advance the product into position where the product can be used as the product is used up.

With regard to claim 15, Fryar et al. teaches a method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column 4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46), then the insert is removed (Column 2, line 29), then the interphase fills the space previously occupied by the pin (Column 7, lines 32-36). Fryar et al. does not specifically teach that the inner phase added is a fluid, but does teach that it does

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solidify, and thus it is the examiner's position that it is intrinsically a fluid as the time that it is dispensed into the space previously occupied by the pin.

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16). It is intrinsic in the process of Fryar et al. that a portion of the mold cavity (the closed part) defines an application surface of the product.

Fryar et al., however, does not specifically teach that the application surface is dome shaped as Fryar et al. does not go into any detail concerning the shape of antiperspirant product. Piscopo et al. teaches a dispenser-applicator (title) that is useful for deodorants and antiperspirants (Column 1, line 16), where the cosmetic material is molded in the product dispenser-applicator (Figure 3) and forms a dome shaped application surface. It would have been obvious to one having ordinary skill in the art at the time of invention to mold a product as taught by Fryar et al. in the dispenser-applicator as taught by Piscopo et al. in order to provide a means to dispense the product and it would have been obvious to form an application surface with a domed shape as taught by Piscopo et al. in order to make a product that conforms to the shape of an arm pit (where deodorant/antiperspirant is usually applied).

With regard to claim 16, although Fryar et al. does not specifically teach a curved shaped insert, Fryar et al. does teach an insert that sealing contacts the inside of the mold (Column 4, line 34). It would have been obvious to one having ordinary skill in the art at the time of invention to modify the shape of the insert to conform the shape of the package mold as taught by Piscopo et al. when molding such a product within the

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dispenser-applicator as taught by Piscopo et al. in order to ensure that no material leaks past the barrier layer.

With regard to claim 28, Fryar et al. teaches a method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column 4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46).

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16). It is intrinsic in the process of Fryar et al. that a portion of the mold cavity (the closed part) defines an application surface of the product.

Fryar et al., however, does not specifically teach that the application surface is dome shaped as Fryar et al. does not go into any detail concerning the shape of antiperspirant product. Piscopo et al. teaches a dispenser-applicator (title) that is useful

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for deodorants and antiperspirants (Column 1, line 16), where the cosmetic material in molded in the product dispenser-applicator (Figure 3) and forms a dome shaped application surface. It would have been obvious to one having ordinary skill in the art at the time of invention to mold a product as taught by Fryar et al. in the dispenser-applicator as taught by Piscopo et al. in order to provide a means to dispense the product and it would have been obvious to form an application surface with a domed shape as taught by Piscopo et al. in order to make a product that conforms to the shape of an arm pit (where deodorant/antiperspirant is usually applied).

9. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,393,643 (Fryar et al.) in view of U.S. Patent No. 5,984,553 (Piscopo et al.) as applied to claims 3, 5, 14-16, 20, 21, 24, 25, and 28 above, and further in view of U.S. Patent No. 5,043,114 (Saito et al.).

With regard to claims 26 and 27, although Fryar et al. does not specifically teach a process in which the insert is integral with the bottom mold part, Saito et al. teaches a mold tool that includes a mold core (projecting part of the mold) where a first material is molded followed by replacing the mold core side of the mold with a second mold without the entire projection so that a second material can be molded into the space previously occupied by the mold core (Figures). It would have been obvious to one having ordinary skill in the art at the time of invention to modify the process of Fryar et al. to include a mold part with an insert shaped core followed by replacing the mold with core with a second mold that conforms to the desired final shape of the molded product (as taught by Saito et al.) in the process of forming the product of Fryar et al. in order to

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better control the placement of the insert. It would have been obvious to one having ordinary skill in the art at the time of invention to further use the first closure as taught by Piscopo et al. as a second molding device after the first material is formed in order to provide a means to contain the second material after the removal of the mold with the integral insert.

10. Claims 3, 20, 21, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,393,643 (Fryar et al.) in view of U.S. Patent No. 4,518,553 (Yarossi et al.).

Fryar et al. teaches the basic claimed method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column 4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46), then the insert is removed (Column 2, line 29), then the interphase

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fills the space previously occupied by the pin (Column 7, lines 32-36). Fryar et al. does not specifically teach that the inner phase added is a fluid, but does teach that it does solidify, and thus it is the examiner's position that it is intrinsically a fluid as the time that it is dispensed into the space previously occupied by the pin.

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16). It is intrinsic in the process of Fryar et al. that a portion of the mold cavity (the closed part) defines an application surface of the product.

With regard to claim 3, Fryar et al. does not specifically teach that the application surface is dome shaped, as Fryar et al. does not go into any detail concerning the shape of antiperspirant product. Yarossi et al., however, teaches a dispenser (Figures) that is useful for deodorants and antiperspirants (Column 1, lines 11-12), where the cosmetic material is molded in the product dispenser (Figure 1) and forms a dome shaped application surface. It would have been obvious to one having ordinary skill in the art at the time of invention to mold a product as taught by Fryar et al. in the dispenser-applicator as taught by Yarossi et al. in order to provide a means to dispense the product and it would have been obvious to form an application surface with a domed shape as taught by Yarossi et al. in order to make a product that conforms to the shape of an arm pit (where deodorant/antiperspirant is usually applied).

With regard to claims 20 and 21, Yarossi et al. teaches a mold body (ref. No. 54) to which the top end of the container (ref. No. 50) is affixed (Figure 1), prior to the molding of the material into the container. This is intrinsically in a sealed arrangement so that the material does not leak. It would have been obvious to one having ordinary

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skill in the art at the time of invention to use the mold part as taught by Yarossi et al. in the process of making the product as taught by Fryar et al. in order to provide a dispenser for the product and in order to ensure that the material for the product does not leak out of the container during the molding of the product within the container.

With regard to claim 24, Yarossi et al. teaches the removal of the mold part after the product the complete solidification of the material within the package. It would have been obvious to one having ordinary skill in the art at the time of invention to allow for the product to completely solidify (all materials) when making the product of Fryar et al. in the dispenser of Yarossi et al. prior to removing the container from the mold in order to ensure that the material retains its shape.

With regard to claim 25, it is well known to provide consumer packages with factory seals in order to reassure the consumer that the product has not been tampered with after leaving the factory. Although neither Fryar et al. nor Yarossi et al. specifically teach the use of such a factory seal, it would have been obvious to one having ordinary skill in the art at the time of invention apply a factory seal after the product is complete so that the consumer will know that the product has not been tampered with after leaving the factory.

11. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,393,643 (Fryar et al.) in view of U.S. Patent No. 4,518,553 (Yarossi et al.) as applied to claims 3, 20, 21, 24, and 25 above, and further in view of U.S. Patent No. 3,972,974 (Pico).

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With regard to claims 22 and 23, Although Fryar et al. teaches one specific way to place an insert into a mold body, Pico teaches an additional way to insert an insert into a mold body in order to leave a passage through the molded body by having an insert that goes through and seals a hole in the bottom of a mold part (Figures 6 and 7). It would have been obvious to one having ordinary skill in the art at the time of invention to modify the process of Fryar et al. to include the use of an insert that is inserted through the bottom of the mold part in order to ensure that none of the outer material leaks past the barrier material.

12. Claims 3, 13, 14, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,393,643 (Fryar et al.) in view of U.S. Patent No. 5,947,621 (Szekely).

Fryar et al. teaches the basic claimed method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column 4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the

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container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46), then the insert is removed (Column 2, line 29), then the interphase fills the space previously occupied by the pin (Column 7, lines 32-36). Fryar et al. does not specifically teach that the inner phase added is a fluid, but does teach that it does solidify, and thus it is the examiner's position that it is intrinsically a fluid as the time that it is dispensed into the space previously occupied by the pin.

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16). It is intrinsic in the process of Fryar et al. that a portion of the mold cavity (the closed part) defines an application surface of the product.

With regard to claim 3, Fryar et al. does not specifically teach that the application surface is dome shaped as Fryar et al. does not go into any detail concerning the shape of antiperspirant product. Szekely, however, teaches a dispenser (title) that is useful for various gels and crèmes for application to the skin (Column 1, lines 7-9), where the cosmetic material is molded in the product dispenser (Figure 6) and forms a dome shaped application surface. It would have been obvious to one having ordinary skill in the art at the time of invention to mold a product as taught by Fryar et al. in the dispenser as taught by Szekely in order to provide a means to dispense the product and it would have been obvious to form an application surface with a domed shape as taught by Szekely in order to make a product that conforms to the shape of an arm pit (where deodorant/antiperspirant is usually applied).

With regard to claims 13 and 14, Fryar et al. does not specifically teach that a package base is applied to the package after or before the second material is at least partially solidified. Szekely, however, teaches the insertion of a base to a package before the material has solidified in order to complete the formation of the dispenser and to embed the product advancement device into the material (Figure 7). It would have been obvious to one having ordinary skill in the art at the time of invention to mold a product as taught by Fryar et al. in the dispenser as taught by Szekely in order to provide a means to dispense the product and it would have been obvious to add the base prior to the solidification of the inner material in order to embed the product advancement device.

With regard to claim 14, Piscopo et al. also teaches an advancement device (Figure 1, ref. No. 27). It would have been obvious to one having ordinary skill in the art at the time of invention to use the dispenser-applicator as taught by Piscopo et al. in the production of the multi-phased product of Fryar et al. in order to provide a means to dispense the product and it would have been obvious to a product advancement means as taught by Piscopo et al. in order to advance the product into position where the product can be used as the product is used up.

With regard to claim 28, Fryar et al. teaches a method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column

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4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46).

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16). It is intrinsic in the process of Fryar et al. that a portion of the mold cavity (the closed part) defines an application surface of the product.

Fryar et al. does not specifically teach that the application surface is dome shaped as Fryar et al. does not go into any detail concerning the shape of antiperspirant product. Szekely, however, teaches a dispenser (title) that is useful for various gels and crèmes for application to the skin (Column 1, lines 7-9), where the cosmetic material is molded in the product dispenser (Figure 6) and forms a dome shaped application surface. It would have been obvious to one having ordinary skill in the art at the time of invention to mold a product as taught by Fryar et al. in the dispenser as taught by Szekely in order to provide a means to dispense the product and it would have been obvious to form an application surface with a domed shape as taught by Szekely in

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order to make a product that conforms to the shape of an arm pit (where deodorant/antiperspirant is usually applied).

13. Claims 10, 11, and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,393,643 (Fryar et al.) in view of U.S. Design Patent No. D457,263 S (Gersten et al.).

Fryar et al. teaches the basic claimed method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column 4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46), then the insert is removed (Column 2, line 29), then the interphase fills the space previously occupied by the pin (Column 7, lines 32-36). Fryar et al. does not specifically teach that the inner phase added is a fluid, but does teach that it does

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solidify, and thus it is the examiner's position that it is intrinsically a fluid as the time that it is dispensed into the space previously occupied by the pin.

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16).

With regard to claim 10, Fryar et al. does not specifically teach that the different components are of different colors, but does teach the incorporation of possible pigments, dyes, and coloring agents into the different phases (Column 5, line 62).

Gersten et al. teaches a decorative antiperspirant and/or deodorant product that has different areas of different color (figures). It would have been obvious to one having ordinary skill in the art at the time of invention to make the two phases of different color in order to create a decorative effect.

With regard to claim 11, Fryar et al. does not teach that the second composition forms a stripe across the deodorant stick. Gersten et al., however, does teach for such a design (Figure 2). It would have been obvious to one having ordinary skill in the art at the time of invention to use the process of Fryar et al. to create a number of decorative designs including those as taught by Gersten et al. in order to increase the sales of the product.

With regard to claim 30, Fryar et al. teaches a method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column

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4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46), then the insert is removed (Column 2, line 29), then the interphase fills the space previously occupied by the pin (Column 7, lines 32-36). Fryar et al. does not specifically teach that the inner phase added is a fluid, but does teach that it does solidify, and thus it is the examiner's position that it is intrinsically a fluid as the time that it is dispensed into the space previously occupied by the pin.

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16).

Fryar et al. does not teach that the second composition portion divides the first composition portion into two portions. Gersten et al., however, does teach a design that separates the one colored composition into two portions (Figure 2). It would have been obvious to one having ordinary skill in the art at the time of invention to use the process of Fryar et al. to create a number of decorative designs including those as taught by Gersten et al. that separate one composition into two portions in order to increase the sales of the product.

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With regard to claims 31 and 32, Fryar et al. teaches that the pin is made of a polished, anodized stainless steel or aluminum (a metal). It is further noted that claim 32 only further redefines the group of coated metals and does not further limit the group of metals.

14. Claims 10, 11, and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,393,643 (Fryar et al.) in view of U.S. Design Patent No. D454,664 S (Look).

Fryar et al. teaches the basic claimed method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column 4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46), then the insert is removed (Column 2, line 29), then the interphase fills the space previously occupied by the pin (Column 7, lines 32-36). Fryar et al. does

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not specifically teach that the inner phase added is a fluid, but does teach that it does solidify, and thus it is the examiner's position that it is intrinsically a fluid as the time that it is dispensed into the space previously occupied by the pin.

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16).

With regard to claim 10, Fryar et al. does not specifically teach that the different components are of different colors, but does teach the incorporation of possible pigments, dyes, and coloring agents into the different phases (Column 5, line 62). Look, however, teaches a combined multi-composition stick product (such as deodorant) that has different areas of different color (figures). It would have been obvious to one having ordinary skill in the art at the time of invention to make the two phases of different color in order to create a decorative effect.

With regard to claim 11, Fryar et al. does not teach that the second composition forms a stripe across the deodorant stick. Look, however, does teach for such a design (Figures). It would have been obvious to one having ordinary skill in the art at the time of invention to use the process of Fryar et al. to create a number of decorative designs including those as taught by Look in order to increase the sales of the product.

With regard to claim 30, Fryar et al. teaches a method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column

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4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46), then the insert is removed (Column 2, line 29), then the interphase fills the space previously occupied by the pin (Column 7, lines 32-36). Fryar et al. does not specifically teach that the inner phase added is a fluid, but does teach that it does solidify, and thus it is the examiner's position that it is intrinsically a fluid as the time that it is dispensed into the space previously occupied by the pin.

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16).

Fryar et al. does not teach that the second composition portion divides the first composition portion into two portions. Look, however, does teach a design that separates a single composition into different portions (Figures). It would have been obvious to one having ordinary skill in the art at the time of invention to use the process of Fryar et al. to create a number of decorative designs that separates the first composition into multiple portions.

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With regard to claims 31 and 32, Fryar et al. teaches that the pin is made of a polished, anodized stainless steel or aluminum (a metal). It is further noted that claim 32 only further redefines the group of coated metals and does not further limit the group of metals.

15. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,393,643 (Fryar et al.) in view of U.S. Patent No. 5,643,467 (Romanco).

With regard to claim 9, Fryar et al. teaches a method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column 4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46), then the insert is removed (Column 2, line 29), then the interphase fills the space previously occupied by the pin (Column 7, lines 32-36). Fryar et al. does not specifically teach that the inner phase added is a fluid, but does teach that it does

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solidify, and thus it is the examiner's position that it is intrinsically a fluid as the time that it is dispensed into the space previously occupied by the pin.

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16).

Fryar et al. does not specifically teach that the insert has a pressure ridge. Romanco, however, teaches the use of pressure ridges to prevent leaks (title). It would have been obvious to one having ordinary skill in the art at the time of invention to modify the insert of Fryar et al. to include a pressure ridge along the sides of the insert so that material does not leak past the barrier material.

16. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,393,643 (Fryar et al.) in view of U.S. Patent No. 4,366,038 (Kearney et al.).

With regard to claim 6, Fryar et al. teaches a method of manufacturing an antiperspirant product (Column 3, lines 57-58) within a container (package; Column 4, line 30), the container having an open end and a closed end (Column 4, lines 32-39). Fryar et al. teaches that the closed end is preferred to be the top of the cosmetic package, "which top is closed with the cap associated with the final package" (Column 4, lines 37-39), thus the closed end of Fryar et al. constitutes an application end and the open end of Fryar et al. is opposite (Figures 3-7) is opposite to the application and thus constitutes an opposite end. It is further intrinsic in this process that the formed product of Fryar et al. has an application surface adjacent to the application end.

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Fryar et al. teaches the delivery of a molten outer phase material through the opposite end (Figures 3-4) to a mold cavity that is defined at least in part by the container (package) (Column 4, lines 42-45; Figure 4). The mold cavity also includes a removable insert (Figure 4, ref. # 1). The molten outer phase is allowed to solidify (Column 4, line 46), then the insert is removed (Column 2, line 29), then the interphase fills the space previously occupied by the pin (Column 7, lines 32-36). Fryar et al. does not specifically teach that the inner phase added is a fluid, but does teach that it does solidify, and thus it is the examiner's position that it is intrinsically a fluid as the time that it is dispensed into the space previously occupied by the pin.

Fryar et al. teaches that the outer phase material includes antiperspirant salts (Column 5, lines 15-16).

Fryar et al. does not specifically teach that the insert has a flange that fits securely within the open end of the container. Kearney et al., however, teaches the use of an insert with a flange that fits securely in an end of a container in order to correctly place the insert (Figure 1). It would have been obvious to one having ordinary skill in the art at the time of invention to modify the insert of Fryar et al. to include a flange that would fit securely within the open end of the container (package) in order to ensure the proper placement of the insert within the container.

Double Patenting

17. Claims 1-4, 10, 11, 13-15, 18, 19, 28, and 30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, and 7 of copending Application No. 09/784487. Although the

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conflicting claims are not identical, they are not patentably distinct from each other because the claim language of instant claim 28 encompasses the process as taught by the claims of Application No. 09/784487.

With regard to instant claim 1, Application No. 09/784487 teaches a method of manufacturing an antiperspirant or deodorant product within a container, the product having an application surface (claim 1). It is intrinsic to the process in Application No. 09/784487 that the container has an application end and an opposite end and an application surface adjacent the application end. Application No. 09/784487 teaches the delivery of a first fluid composition that will form the first portion and a second fluid composition that will form the second portion and preventing the intermingling of the first and second compositions (claim 1). Application No. 09/784487 further teaches the use of a molding surface against which at least one of the compositions is formed against (claim 2) and this molding surface constitutes an insert. Application No. 09/784487 further teaches that the first composition is delivered followed by at least partial solidification of the first composition, followed by removal of the molding surface, followed by the delivery of the second composition (claim 8). Application No. 09/784487 also teaches that at least one of the compositions includes an antiperspirant salt and/or deodorant active ingredient (claim 1). It is further noted that the second composition of Application No. 09/784487 would intrinsically fill into the space occupied by the molding surface.

With regard to instant claim 2, a first portion of the mold cavity intrinsically defines an application surface of the product.

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With regard to claim 3, it is well known in the art of antiperspirant or deodorant stick products to form such products with a dome-shaped surface in order to facilitate the product application to a consumer's body. It would have been obvious to one having ordinary skill in the art at the time of invention to form the product of Application No. 09/784487 with a dome shaped surface in order to facilitate the product application to a consumer's body.

With regard to instant claim 4, although Application No. 09/784487 does not specifically teach that the molding surface (insert) is positioned into the container prior to the depositing of the first fluid composition, it is intrinsic to the process that the molding surface must be first deposited into the container in order form one of the compositions against the molding surface.

With regard to claim 10, Application No. 09/784487 teaches that the different compositions are different colors (claim 17).

With regard to claim 11, Application No. 09/784487 teaches that the second composition defines a stripe extending through the first composition (claim 18).

With regard to claims 13 and 14, Application No. 09/784487 teaches the application of such a base and advancement device (claims 19 and 20).

With regard to claim 15, Application No. 09/784487 teaches a method of manufacturing an antiperspirant or deodorant product within a container, the product having an application surface (claim 1). It is intrinsic to the process in Application No. 09/784487 that the container has an application end and an opposite end and an application surface adjacent the application end. Application No. 09/784487 teaches

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the delivery of a first fluid composition that will form the first portion and a second fluid composition that will form the second portion and preventing the intermingling of the first and second compositions (claim 1). Application No. 09/784487 further teaches the use of a molding surface against which at least one of the compositions is formed against (claim 2) and this molding surface constitutes an insert. Application No. 09/784487 further teaches that the first composition is delivered followed by at least partial solidification of the first composition, followed by removal of the molding surface, followed by the delivery of the second composition (claim 8). Application No. 09/784487 also teaches that at least one of the compositions includes an antiperspirant salt and/or deodorant active ingredient (claim 1). It is further noted that the second composition of Application No. 09/784487 would intrinsically fill into the space occupied by the molding surface. Although Application No. 09/784487 does not specifically claim a dome shaped surface, it is well known in the art of antiperspirant or deodorant stick products to form such products with a dome-shaped surface in order to facilitate the product application to a consumer's body. It would have been obvious to one having ordinary skill in the art at the time of invention to form the product of Application No. 09/784487 with a dome shaped surface in order to facilitate the product application to a consumer's body.

With regard to claim 18, Application No. 09/784487 teaches that the different compositions are different colors (claim 17).

With regard to claim 19, Application No. 09/784487 teaches that the second composition defines a stripe extending through the first composition (claim 18).

With regard to claim 28, Application No. 09/784487 teaches a method of manufacturing an antiperspirant or deodorant product within a container, the product having an application surface (claim 1). Application No. 09/784487 teaches the delivery of a first fluid composition that will form the first portion and a second fluid composition that will form the second portion and preventing the intermingling of the first and second compositions (claim 1). Application No. 09/784487 further teaches the use of a molding surface against which at least one of the compositions is formed against (claim 2) and this molding surface constitutes an insert. Application No. 09/784487 further teaches that the first composition is delivered followed by at least partial solidification of the first composition (claim 8). Although Application No. 09/784487 does not specifically claim a dome shaped surface, it is well known in the art of antiperspirant or deodorant stick products to form such products with a dome-shaped surface in order to facilitate the product application to a consumer's body. It would have been obvious to one having ordinary skill in the art at the time of invention to form the product of Application No. 09/784487 with a dome shaped surface in order to facilitate the product application to a consumer's body.

With regard to claim 30, Application No. 09/784487 teaches a method of manufacturing an antiperspirant or deodorant product within a container, the product having an application surface (claim 1). It is intrinsic to the process in Application No. 09/784487 that the container has an application end and an opposite end and an application surface adjacent the application end. Application No. 09/784487 teaches the delivery of a first fluid composition that will form the first portion and a second fluid

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composition that will form the second portion and preventing the intermingling of the first and second compositions (claim 1). Application No. 09/784487 further teaches the use of a molding surface against which at least one of the compositions is formed against (claim 2) and this molding surface constitutes an insert. Application No. 09/784487 further teaches that the first composition is delivered followed by at least partial solidification of the first composition, followed by removal of the molding surface, followed by the delivery of the second composition (claim 8). Application No. 09/784487 also teaches that at least one of the compositions includes an antiperspirant salt and/or deodorant active ingredient (claim 1). It is further noted that the second composition of Application No. 09/784487 would intrinsically fill into the space occupied by the molding surface. Although Application No. 09/784487 does not specifically claim a dome shaped surface, it is well known in the art of antiperspirant or deodorant stick products to form such products with a dome-shaped surface in order to facilitate the product application to a consumer's body. It would have been obvious to one having ordinary skill in the art at the time of invention to form the product of Application No. 09/784487 with a dome shaped surface in order to facilitate the product application to a consumer's body. Application No. 09/784487 teaches that the second composition forms a strip through the first composition (claim 18) thus intrinsically dividing the first composition into two portions.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

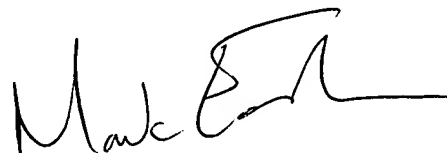
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Geoffrey P. Shipsides whose telephone number is 703-306-0311. The examiner can normally be reached on Monday - Friday 9 AM till 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D Crispino can be reached on 703-308-3853. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Geoffrey P. Shipsides/gps
March 18, 2003



MARK EASHOO, PH.D
PRIMARY EXAMINER

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28/Mar/03